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Richard, James, and Bethel Wellington,
Infants, by *Bethel Goodwin* their Guar- } Appellants.
dian,

John Poulson, John Darby, Arthur Bet- } Respondents.
tesworth, and Francis Clay,

The Appellants C A S E

Richard Wellington dies
intestate Nov. 27. 1715.

THE Appellants Father, *Richard Wellington*, a Bookseller and Freeman of *London*, died Intestate on or about the 27th of *November* 1715. leaving *Mary* his Widow, (with whom he had no Fortune) and three Children by the said *Mary*, viz. the Appellants *Richard, James, and Bethel Wellington*.

Five Ninths of his personal Estate belong to his three Children the Appellants, the other four Ninths to his Widow *Mary Wellington*.

His Personal Estate, which consisted chiefly in a Stock of Books, and an Interest in several Copies or Shares of Copies, did (upon his dying Intestate) by virtue of the Custom of *London*, and of the Act of 22d and 23d of *Car. II.* entitled, *An Act for the better settling of Intestates Estates*, belong, four Ninths to his said Widow, and the remaining five Ninths equally to his said three Children.

Who takes out Letters of Administration to her Husband.

Mary Wellington the Widow, soon after the death of her said Husband, took out Letters of Administration to him, and by virtue thereof possessed herself of his personal Estate.

And by Indenture Nov. 30. 1719. assigns the said Estate to the Respondents *Darby, Bettesworth, and Clay*, in Trust.

The said *Mary Wellington* being minded to secure to her said Children the Appellants, the aforesaid five Ninths, which did of right belong to them; and also thinking it reasonable, that the other four Ninths of their said Father's Estate should, after her death, go to her said Children; did, for the better answering her said Purposes, and better improving the said Estate, by Indenture bearing Date the 30th of *November*, 1719. assign over all the said Stock of Books and Copies to the Respondents, *Darby, Bettesworth, and Clay*.

To sell the Books, and reprint the Copies, and sell the Impressions.

This Assignment was made upon the following Trusts, That the Assignees should sell the Stock of Books, and from time to time reprint (but not sell) the Copies, and sell the Impressions to the best Advantage: As to four Ninths of the Monies arising by Sale of the said Books in Trade, and reprinting the said Copies, and parts of Copies, the Trustees should upon Request, account for the same once in every half Year, with the said *Mary*, and during her Life, pay the neat Monies resting due upon every such Account, in respect of the said four Ninths, to her, or her Appointment, and in case of Marriage to her separate Use.

To account for four Ninths half yearly, and pay the same to herself during her Life.

After her Death, to such Persons as she should appoint by Will or other Writing.

After her decease, the residue of the Monies so arising, in respect of the said four Ninths of the Produce of the said Books and Copies, and also four Ninths of the said Copies and Shares in Copies, and the Produce thereof, to be to the use of her Will, or other Appointment testified by two Witnesses, whether she should be Covert or Sole.

For want of Appointment, to her three Children equally.

For want of such Appointment, or as to so much whereof no such Appointment should be made, to be in Trust for her said three Children (the Appellants,) their Executors, Administrators and Assigns, equally to be divided among them.

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The five Ninths to be immediately for the benefit of her three Children equally.

Trustees accept the Trust.

Dec. 1720. Treaty of Marriage between the Respondent Poulson, and Mary Wellington.

Previous Articles between the said John Poulson, Mary Wellington and George Bowland.

Recital in the Articles.

A Covenant for a Settlement on Mary Wellington.

The Husband not to alter the Property of her separate Share.

The Wife to have the sole Management of it during Life.

Husband to have only the Produce during their joint Lives.

A Power to the Wife to dispose of it by Will or Writing as she should think fit.

Except as to 200 l.

Jan. 25. 1720. The Marriage takes effect.

Trustees account to her during her Life.

Octob. 24. 1726. Mary dies, making no other Appointment.

The Respondent administers to his Wife, and her former Husband.

Demands of the Trustees the whole four Ninths, insisting the first Disposition to be altered, by Revocation or Appointment.

Files a Bill in Michaelmas Term 1728.

The other five Ninths of the said Books and Copies, and Produce thereof, to be in Trust for the said Children, equally to be divided among them.

The Trustees took upon them the Execution of the Trust.

About a Year after, viz. in December 1720. a Treaty of Marriage was set on foot, between the Respondent John Poulson, and the Appellants said Mother Mary Wellington.

But the said Mary Wellington, ignorant of the Law, and fearing lest the Care she had already taken by the said Indenture, November 30. 1719. to secure to herself in case of Marriage the separate Management of her said Estate during her Life, and the Disposal and Appointment of it after her Death, should by reason of the Intermarriage prove insufficient; therefore the better to secure the same, she caused the Respondent John Poulson, before the said Marriage took effect, to enter into Articles with George Bowland as her Trustee, bearing Date the 11th of December, 1720.

The Articles recite, That the said Mary Wellington had settled on Trustees the respective Proportions of her late deceased Husband's Estate, belonging to her Children, Richard, James, and Bethel Wellington, for the Benefit of the said Children, with the Privy and Consent of the said John Poulson, and her own Share and Proportion of her said Husband's Estate, being to be kept separate for her own Use and Benefit; unto which her said separate Share and Proportion, the said John Poulson would be intitled, in case the said intended Marriage took effect.

By the Articles it is covenanted, That the Respondent, John Poulson, should in Consideration of the Marriage, and Marriage-Portion, settle on his then intended Wife some old Leasehold-Houses, within three Months after Marriage (but the same never were actually settled.)

It is also covenanted, That the said Mary's separate Share or Right to her late Husband's Copies of Books, should during the Joint-Lives of the said John Poulson and Mary Wellington continue unaltered, nor should be disposed of, or varied by him the said John Poulson or his Order, without the Consent of the said Mary, under her Hand testified by two Witnesses.

And that the said Mary Wellington should manage her Proportion of her said late Husband's Estate, in such manner as she should think fit during her Life.

And that John Poulson (the Respondent) should be content to receive, or have the benefit of ONLY the Produce thereof during their Joint-Lives.

And that the said Mary Wellington should have the Power by Will or Writing, duly attested, notwithstanding her Coverture, to dispose of her said separate Share in the said Copies, to such Person or Persons after her Death, as she should think fit; excepting that the said John Poulson, in Case he shall survive the said Mary Wellington, shall have and receive out of the first Produce of the said separate Estate, which should arise after the Death of the said Mary, the Sum of Two Hundred Pounds.

The Marriage took effect the 25th of January, 1720.

The Trustees accounted for the Produce of the said separate Share, and paid the same to the said Mary during her Life; and the last stated Account was to the 10th of October 1725. when the Trustees paid her the Ballance.

On the 24th of October 1726. Mary Wellington died, having made no Disposition or Appointment of her said separate Share or four Ninths, other than by the aforesaid Deed of Assignment, and the said Marriage-Articles.

John Poulson the Respondent takes out Letters of Administration to his said Wife, and also of the unadministred Goods of her former Husband Richard Wellington.

By Virtue hereof, he demands of the Trustees the whole four Ninths, which did belong to his said Wife, insisting that the Disposition made of her separate Share by the Deed of Assignment, was revoked by the Marriage, and Marriage-Articles; or if it were not, that yet the Marriage-Articles amounted to an Appointment to himself.

Not content therefore with the 200 l. which the Trustees were willing to pay him, in Michaelmas Term 1728. he files a Bill for the whole Demand, in the High Court of Chancery.



To which the Appellants and other Respondents Answer.

June 23. The Cause heard before the Lord Chancellor.

The whole four Ninths decreed to the Respondent.

To this Bill the aforesaid Appellants, and the Respondents *Darby, Bettsworth, and Clay*, put in their Answers, submitting the Case to the Opinion of the Court.

On the 23d of *June* 1729, the Cause came to be heard before the Right Honourable the Lord High Chancellor of *Great-Britain*.

Upon hearing the Cause, his Lordship was pleased to Decree, that the said Trustees should come to an Account with the then Plaintiff (the now Respondent *John Poulson*) for the four Ninths of the Personal Estate of the Intestate *Richard Wellington* in their Hands, by virtue of the Deed of Assignment of the 30th of *November* 1719, the Account to commence from the foot of the last Account of the 10th of *October* 1725, with suitable Directions, in order to the taking the Account; and that the Costs of both Sides should go out of the four Ninths of the Trust-Estate.

The Appellants humbly insist, that the said Decree is erroneous, for that the said four Ninths ought to go according to the Disposition of the Deed of Assignment 30 *November* 1719; the Agreement contain'd in the Articles of the 11th of *January* 1720, having made no Alteration therein, (excepting as to the 200 *l.* which they do not contest) neither by way of *Revocation*, nor *Appointment* to the Respondent *Poulson*.

The Articles no Revocation of the Assignment.

It is apprehended that it can be no *Revocation*.

For as it is not pretended to be an express one, so neither can it be an implied one, there being no Inconsistency or Contradiction between the two Deeds; but the Articles, as far as they go (except the 200 *l.*) are to the same Purpose with the Deed of Assignment.

And if it imported to be an express Revocation, yet could it not be valid, as such, because, as there is no Power of Revoking reserved in the said Assignment, so neither can it be deemed fraudulent against the Respondent *Poulson*; for whatever it might be against a Purchaser without Notice, yet in this Case the said *Poulson* was *privy* and *consenting* to the said Assignment, and it is so recited in the Marriage-Articles, to which he is a Party.

No Appointment.

It can be no *Appointment* to the Respondent *Poulson*:

For the Body of the Articles are throughout intended to be restrictive of any Right he might otherwise claim, and expressly provide that the Power of Appointment should still subsist, notwithstanding the Coverture.

And as the Expression, in the reciting part, does not imply, that the Respondent *Poulson* would gain any other Title to the said separate Share, than what would accrue by the Marriage, or any other Interest in it, than what the Wife had herself, *viz.* during her Life; so to construe it to be an actual Appointment, would be making the Recital contradict and over-rule the Body of the Deed.

As to the 200 *l.* reserv'd to the Respondent *Poulson*, it is reserv'd generally in Case he surviv'd his Wife, not in Case he surviv'd her, and she made no Appointment, which shews that he was intended to have no more than 200 *l.* at all Events, unless she should afterwards make an Appointment in his favour.

Wherefore the said *Richard, James, and Bethel Wellington*, humbly pray that the said Decree may be reversed, so far as the same tends to deprive them of so much of their Mother's said separate Share, as exceeds the 200 *l.* and such other Order made in the Premises as shall be thought meet.

P. Y O R K E.

S. E M L Y N.

Richard James, and
Berbel Wellington, } Appellants.

John Poulson, John
Darby, Arthur
Bettefworth and
Francis Clay, } Respondents.

The Appellants C A S E.

To be heard at the Bar of the
House of Lords, on
the
of May 1730.



